

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD WAYNE MICHAEL and TENNESSEE VALLEY AUTHORITY,
Chattanooga, Tenn.

*Docket No. 96-2060; Submitted on the Record;
Issued July 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a permanent partial impairment to a schedule member of his body causally related to his accepted September 24, 1980 employment injury, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

On September 24, 1980 appellant, a 42-year old electrician, was attempting to mount a motor junction box when a co-worker energized the motor, shocking appellant and causing him to jerk backward and strike his head and neck against a wall beam. Appellant filed a Form CA-1 claim for compensation based on an injury to his neck on October 3, 1980. Appellant was examined by Dr. Bennett W. Caughran, a Board-certified orthopedic surgeon, who stated in a report dated September 26, 1980 that he sustained a contusion or sprain of the cervical spine, and released him to return to full duty on October 17, 1980. The Office of Workers' Compensation Programs ultimately accepted appellant's claim for a cervical strain.¹

On November 16, 1993 appellant filed a Form CA-2 claim for recurrence of disability, asserting that as of October 27, 1993 he began experiencing soreness, stiffness, pain and discomfort in his neck which he alleged was caused or aggravated by his accepted September 24, 1980 employment injury. The Office accepted appellant's recurrence claim by letter dated March 14, 1994.

In a treatment note dated April 21, 1994, Dr. Caughran stated that appellant had a permanent impairment of 10 percent of the body as a whole based on his subjective complaints of chronic neck pain.

¹ The record does not contain a letter of acceptance from the Office, but the Office's March 15, 1995 decision stated that the claim was accepted for a cervical strain.

On May 8, 1994 appellant filed a Form CA-7 claim for a schedule award based on his accepted cervical strain injury.

In a decision dated June 9, 1994, the Office denied appellant's claim for a schedule award based on his accepted cervical strain injury. In a memorandum to the Director, the claims examiner stated that there was no provision in the Act² for compensation for impairment to the back or neck.

In a letter dated July 6, 1994, appellant's representative requested reconsideration of the Office's June 9, 1994 decision and review of the record by an Office hearing representative. Accompanying the letter was an August 8, 1994 letter from Dr. Caughran, who reiterated his opinion that appellant's cervical strain amounted to a 10 percent permanent impairment of the body as a whole and indicated that appellant's current condition was related to the accepted September 24, 1980 employment injury. Dr. Caughran also indicated that he was unable to comprehend why the Office did not consider injuries to the neck and back compensable as schedule awards.

By decision dated March 15, 1995, an Office hearing representative affirmed the Office's June 9, 1994 decision denying appellant's claim for a schedule award for a cervical strain injury, finding that there was no evidence of an impairment to any part of the body listed in the schedule. The hearing representative stated that the schedule award provisions of the Act³ and its regulations provide for payment of compensation for permanent loss of use of specified members, functions or organs of the body, and that no schedule award was payable for any member, function or organ of the body not specified in the Act or the regulations.

In a letter dated March 12, 1996, appellant's representative requested reconsideration of the hearing representative's March 15, 1995 decision. Appellant's representative contended that appellant's 10 percent impairment to the body as a whole was compensable as an anatomical or functional loss, and that the neck was included within the term "organ" under 5 U.S.C. § 8101(19).

In a decision dated March 22, 1996, the Office affirmed the hearing representative's decision denying appellant's claim benefits for a schedule award based on his accepted cervical strain injury. In a memorandum to the Director, the claims examiner reiterated that a schedule award was not payable for the loss of a part of the body that was not specifically enumerated under the Act, that neither the Act nor its implementing regulations provided for a schedule award for impairment to the back or to the body as a whole, and that the back was specifically excluded from the definition of "organ" under the Act. The claims examiner further stated that, under the Act, no schedule award was payable for injury to the spine.⁴

² 5 U.S.C. § 8101.

³ 5 U.S.C. § 8101; 8107.

⁴ See *James E. Jenkins*, 39 ECAB 860, 866 (1988).

The Board finds that appellant has not met his burden of proof in establishing that he sustained a permanent partial impairment to a schedule member of his body causally related to his accepted September 24, 1980 employment injury, thereby entitling him to a schedule award under 5 U.S.C. § 8107.

The Federal Employees' Compensation Act⁵ does not specify the manner in which the percentage loss of a schedule member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. For consistent results and to insure justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.

The schedule award provisions of the Act⁶ set forth the number of weeks of compensation to be paid for permanent loss of use of the members listed in the schedule. The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice and to ensure consistent results to all claimants, the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, [the *Guides*] has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁷

In the instant case, Dr. Caughran assigned appellant a 10 percent permanent impairment to the whole person based on appellant's accepted cervical strain injury. However, no schedule award is payable for permanent loss of, or loss of use of, specified anatomical members or functions or organ of the body not specified in the Act or in the implementing regulations.⁸ As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or the body as a whole,⁹ no claimant is entitled to such an award.¹⁰ Therefore, the 10 percent permanent impairment rating assigned by Dr. Caughran does not provide a basis for a schedule award under the Act. Moreover, this rating does not conform with the *Guides*.

As there is no other medical evidence addressing whether appellant has a work-related permanent impairment of a schedule member, the Office properly found that appellant was not

⁵ 5 U.S.C. § 8101.

⁶ 5 U.S.C. § 8107; *see generally* 5 U.S.C. §§ 8101-8193.

⁷ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

⁸ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies only to body members that are not enumerated in the schedule provision as it read before the 1974 amendment, and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment); *see also Ted W. Dieterich*, 40 ECAB 963 (1989); *Thomas E. Stubbs*, 40 ECAB 647 (1989); *Thomas E. Montgomery*, 28 ECAB 294 (1977).

⁹ The Federal Employees' Compensation Act itself specifically excludes the back from the definition of "organ." 5 U.S.C. § 8101(19); *see also Rozella L. Skinner*, 37 ECAB 398 (1986).

¹⁰ *George E. Williams*, 44 ECAB 530 (1993).

entitled to an award for a permanent partial impairment to a schedule member of his body causally related to his accepted September 24, 1980 employment injury.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 6, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member